Pellegrino, Rachel

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:26 PM
To: Brown, Brian (TM)
Subject: FW: Small Business Study

From: Kenneth Copenhaver (b)(6)
Sent: Sunday, December 12, 2010 12:10 PM
To: TMFeedback
Subject: Small Business Study

I am not a small business owner and have never been directly involved in a trademark dispute. However, I am sympathetic to small businesses that are forced to choose between spending valuable resources defending their trademarks against deep-pocketed corporations or change their product name and risk losing brand-recognition that they have built up through hard work.

While there may be some cases where bullying is the prime motivation in challenging trademarks, I feel that in most cases the challengers are only doing what they feel is required by trademark law to "vigorously defend" their trademarks or risk losing them. The vagueness of the law causes corporations and their lawyers to be super-cautious and challenge any instance of trademark similarities in even distantly-related or unrelated businesses, or vaguely-similar wordings. They feel that they are "required" to make the challenge.

In rare cases, such as Rock Art's Vermonster trademark challenge, a letter-writing campaign caused the challenger to feel that they had more to lose from negative publicity than from any threat to their trademark, and the matter was quickly settled with an agreement. Although the outcome of the Rock Art case made sense to most reasonable people, the threat of public opinion should not be the deciding factor for when a trademark holder decides to make or drop a challenge.

In short, the trademark laws need to be clarified in such a way that trademark holders do not feel that they are "required" to defend against any and all uses of their trademark, no matter how tangential or insignificant. The problem seems to be that the best way to defend a trademark is to send a cease and desist letter, which is very threatening to a small business. What is needed is assurances that other, more civil options can also be used preserve a trademark. Such options could include agreements that acknowledge the potential conflict and that outline how the challenged company to use their trademark in a way that does not threaten the trademark holder. Such agreements should be encouraged as an alternative to a cease and desist letter, and they should be clearly recognized as a valid means of defending a trademark.

Thank you for the opportunity to comment.

Kenneth Copenhaver
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